

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS**

TYLER DIVISION

DATE: 6/29/09

JUDGE
JOHN LOVE

REPORTER: Kimberly Julian
LAW CLERK: Jessica Hannah

REALTIME DATA Plaintiff vs. PACKETEER, INC., ET AL Defendant	CIVIL ACTION NO: 6:08CV144 MOTION HEARING
ATTORNEY FOR PLAINTIFF	ATTORNEY FOR DEFENDANT
Doug McSwane Tony Pastor Khue Hoang John Bufe Ken Herman	David Beckwith Ramsey Alsalam Erica Wilson Fay Morisseau Jerry Dodson Greg Bishop Carl Bruce Michelle Breit Jennifer Ainsworth

On this day, came the parties by their attorneys and the following proceedings were had:

OPEN: 1:39 pm

ADJOURN: 4:33 pm

TIME:	MINUTES:
1:39 pm	Mr. McSwane, Mr. Pastor, Mr. Hoang, Mr. Bufe and Mr. Herman announced ready on behalf of the plaintiff. Mr. Beckwith, Mr. Alsalam, Ms. Wilson and Mr. Morisseau announced ready on behalf of the defendants'.
1:40 pm	The Court greeted the parties and stated we are here to hear argument on two of plaintiff's motions, Motion to Compel, #319, and Motion for Leave to Amend Infringement Contentions, #322.
1:41 pm	Mr. Bufe discussed the depositions and discovery requests at issue. Argument on motion began on behalf of the plaintiff. He discussed the blanket assertion of privilege. Discussion was made regarding Blue Coat's due diligence activities prior to acquiring Packeteer. Reference was made of the "Alcon case". Their discovery request are permissible. Underlying facts are not privileged.

DAVID J. MALAND, CLERK

FILED: 6/29/09

BY: *Mechele Morris*, Courtroom Deputy

PAGE 2 - Proceedings Continued

TIME:	MINUTES:
1:54 pm	Mr. Beckwith responded and made argument on behalf of the defendant. Plaintiff has their answer. Discussion was made on the blanket assertion of privilege. He referred to the "Hewitt Packard case". He discussed the patent clearance procedures. Having the deposition is unnecessary and would be a waste of time.
2:00 pm	Mr. Bufe responded. They do not have full information. Discussion was made of Ms. Laughlin's testimony and due diligence. They have not had an opportunity to sit someone down to question.
2:06 pm	Mr. Beckwith responded. He further discussed the claim of willful infringement and privilege information. Discussion was made of the threats of litigation until April 11.
2:11 pm	Mr. Bufe further responded as to due diligence and Blue Coat not knowing anything.
2:14 pm	Mr. Beckwith further responded about Realtime asking further questions.
2:15 pm	The Court will now move to the Motion to Amend #322.
2:16 pm	Ms. Wilson asked that certain people leave for discussion on confidential information.
2:16 pm	Mr. Pastor began argument on Motion for Leave to Amend, #322. Leave should be granted due to the enormity and lateness of defendants' document productions, not from lack from any lack of diligence by Realtime Data. The amended contentions could not have been made by August 28, 08. The amended infringement contentions are important to Realtime Data. Discussion made on Blue Coat's ProxySG. Realtime Data has been diligently pursuing and reviewing the defendants' discovery. Realtime Data's amended infringement contentions are critical to Realtime Data's patent rights. The substantial similarity between the old and new contentions minimizes any prejudice. The amended infringement contentions actually reduce the complexity of the case. He discussed the proposed amended scheduling order. The amendment will not change the trial schedule. He discussed what they did when they got the source code.
2:54 pm	Ms. Wilson made argument on motion on behalf of the defendant. Discussion made of Realtime proposal to add 27 new infringement claims.
2:58 pm	Mr. Pastor responded and discussed how it would not change the case.
2:59 pm	Ms. Wilson continued argument. The proposed amendments dramatically alter damages case. Realtime was not diligent. Citrix disclosed the XenApp protocol in October 08. The table of contents for ICA 3.0 identifies "ReducerVersion 3". Realtime's May 11 charts show that Realtime is relying on information provided in October. They did not disclose many of their proposed amendments on May 11. Citrix will be required to redo its case with what plaintiff wants to do.
3:16 pm	Recess for 10 minutes.
3:36 pm	Court resumed. Mr. Pastor responded and gave rebuttal argument. He further discussed the source code and further documents that changed their contentions.
3:44 pm	Ms. Wilson further responded.

PAGE 3 - Proceedings Continued

TIME:	MINUTES:
3:45 pm	Mr. Morisseau responded and made argument on behalf of the defendant. Realtime could have included the claims in the original contentions or sought to amend much earlier. Discussion made of Blue Coat's source code and technical documents produced. Blue Coat produced documents describing multi-processor use and shared compression workload before Realtime examined source code in January. Discussion made of timeline of markman briefing and further discovery. Defendants' will suffer substantial prejudice in the motion is granted. Realtime's amended packetshaper contentions dramatically expand the 761, 506 and 992 infringement theories. Discussion made on Realtime red-herring arguments. Defendants' want to continue trial date. Plaintiff should be trimming their case down.
4:13 pm	Mr. Pastor responded and made further argument on motion. Discussion further made on the source code and deposition of Mr. Long.
4:21 pm	Mr. Morisseau further responded and made rebuttal argument.
4:22 pm	Mr. Beckwith responded and discussed the past hotline call regarding dates of depositions.
4:24 pm	Mr. Alsalam responded and argued motion. They consider this a wholesale change from plaintiff.
4:30 pm	Mr. Pastor further responded and gave rebuttal argument.
4:31 pm	The Court will get a ruling as soon as possible. Expert rebuttal report deadlines are to be tolled until ruling on Motion to Amend. The Court will give deadline for parties to submit. The Court directed parties to call this chambers for any issue and directed parties to come to him for pretrial matters, not Judge Davis.
4:33 pm	There being nothing further, Court is adjourned.